DISTRICT COURT, BOULDER COUNTY, COLORADO
Court Address:

1777 SIXTH STREET P.O. BOX 4249, BOULDER, CO, 80306-4249

THE PEOPLE OF THE STATE OF COLORADO
v.

Defendant(s) AHMAD AL ALIWI ALISSA

A COURT USE ONLY A Case Number: 2021CR497
Division: 13 Courtroom:

Order: MOTION FOR DISCOVERY (D-004)

The motion/proposed order attached hereto: ACTION TAKEN.

The People shall comply with their discovery obligations pursuant to Crim.P. 16 and Brady v. Maryland.

Issue Date: 3/23/2021

THOMAS FRANCIS MULVAHILL

District Court Judge

District Court, Boulder County, Colorado Court Address: 1776 6 <sup>th</sup> Avenue Boulder, CO 80306	
Boulder, CO 60300	
THE PEOPLE OF THE STATE OF COLORADO	
v.	
Ahmad Alissa,	
Defendant.	σ COURT USE ONLY σ
Megan Ring, Colorado State Public Defender	Case No. 21CR497
Samuel Dunn #46901	
Senior Deputy State Public Defender	Division 13
Kathryn Herold #40075	
Supervising Deputy State Public Defender	
Boulder Regional Public Defenders	
2555 55TH Street D-200, Boulder, CO 80301	
Phone: (303) 444-2322 Fax: (303) 449-6432	
E-mail: boulder.defenders@state.co.us	
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20,	

Pursuant to Colo. R. Crim. P. 16, the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, Article II, Section 16 and 25 of the Colorado Constitution and *Brady v. Maryland*, 373 U.S. 83 (1963), Mr. Alissa moves for an order directing the prosecution to make inquiry and disclose all of the following within their possession, custody and control, or the existence of which is known or by the exercise of due diligence could become known to the prosecution:

MR. ALISSA'S MOTION FOR DISCOVERY (D-004)

## Witness Information

- 1. Mr. Alissa requests current names, addresses, and telephone numbers of all prosecution witnesses.
- 2. Mr. Alissa requests all records, police reports and information regarding prior criminal convictions, guilty verdicts, juvenile adjudications, or pending criminal or juvenile cases of all prosecution witnesses in Colorado or other states. This information is discoverable under Colorado law, as outlined below:
  - a. Colo. R. Crim. P. 16 (I)(a)(I) requires production of "prior criminal convictions" of all prosecution witnesses. This rule is not by its terms limited to felony convictions.
  - b. Felony convictions may be used for impeachment purposes. Section 13-90-101.

- c. Juvenile adjudications may be used for impeachment purposes. *People v. Pate*, 625 P.2d 369 (Colo. 1981).
- d. Misdemeanor convictions probative of untruthfulness or dishonesty may be used for impeachment purposes. C.R.S. 608; *People v. Armstrong*, 704 P.2d 877 (Colo. App. 1985).
- e. The fact of probation or parole at any time during the pendency of this case is probative of bias or motive, and is admissible regardless of the type of underlying conviction. *Davis v. Alaska*, 415 U.S. 308 (1974); *Pate*, supra; *People v. Bowman*, 669 P.2d 1369 (Colo. 1983).
- f. The existence of cases pending at any time during the investigation of pendency of this case is admissible as to bias or motive. People v. Jones, 675 P.2d 9 (Colo. 1984); *People v. King*, 179 Colo. 94, 498 P.2d 1142 (1972).
- g. Mr. Alissa has no reasonable means to obtain such information other than through the prosecution. Only the prosecution has access to the various sources for establishing their witnesses' criminal records or the existence of a pending charge, such as thorough F.B.I. records, NCIC, CCIC, and COSIN listings, and the prosecution's own records, and Mr. Alissa has no access to the juvenile records of any of the prosecution witnesses.
- 3. Any and all records or information revealing prior misconduct or bad acts attributed to any prosecution witnesses. Such misconduct may be admissible under C.R.E. 608(b) even though no conviction resulted, or may lead to the discovery of character evidence admissible under C.R.E. 608(a).

## **Oral Statements of Witnesses**

- 4. Counsel requests discovery of all oral statements made to any government entity or agent by witnesses or other involved parties.
- 5. Mr. Alissa requests that this Court order the prosecution to disclose any and all hearsay statements which the prosecution intends to offer as evidence at trial and the basis for their admission.
- 6. Said discovery is authorized by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, by Article II, Sections 16 and 25 of the Colorado Constitution, and by Colo. R. Crim. P. 16. Rule 16 provides for discovery in the Court's discretion of any relevant material not specifically described in Rule 16.
- 7. Without this discovery, defense counsel will be unable to adequately confront prosecution witnesses and to properly prepare for trial.

- 8. A pretrial hearing would be necessary to determine the admissibility of any hearsay statements. *People v. Dement*, 661 P.2d 675 (Colo. 1983). Defense counsel needs notice of the District Attorney's intent in order to prepare for this hearing.
- 9. Defense counsel cannot effectively defend against the admission of hearsay statements unless notified that the District Attorney intends to introduce such statements at trial. This implicates Mr. Alissa's Constitutional rights to due process of law, and effective assistance of counsel.
- 10. Mr. Alissa requests that all such statements be reduced to writing and be provided to counsel prior to introduction.

## **Exculpatory Statements and Evidence**

11. Rule 16 requires that the prosecution provide to the accused all potentially exculpatory information and material in its possession. This includes potential impeachment or contradiction of the state's witnesses and evidence. *People v. Thatcher*, 638 P.2d 760 (Colo. 1981). Non-recorded statements could also fall into this category and are therefore discoverable. Mr. Alissa requests discovery of all such materials in the possession of the prosecution or agents of the prosecution, including investigators, victim advocates, etc.

MEGAN A. RING	
COLORADO STATE PUBLIC DEFENDER	
/s/Samuel Dunn	
Samuel Dunn #46901	
Deputy State Public Defender	
_/s/Kathryn Herold	
Kathryn Herold #40075	<b>Certificate of Service</b>
Supervising Deputy State Public Defender	I hereby certify that on _March 23, 2021, I served the foregoing document by E filing same to all opposing counsel of
X	record.
	/s/ Sam Dunn

Dated: March 23, 2021